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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,410	08/18/2000	Alice Mary O'Donnell-Kiely		7256

7590 05/02/2002

Alice O Kiely
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Yorktown Heights, NY 10598-1819

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Action Summary

Application No. 07/041410	Applicant(s) KIEV
Examiner S. J. DEWILSTEIN	Group Art Unit 1701

DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-39 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-39 are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

This application contains a myriad number of species or inventions (depending on how one looks at them) and the follow restriction/election is made.

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I, wherein the comestible is frozen

Species II, wherein the comestible is non-frozen

In addition, beside electing Species I and II, the following election of support is required :

Species III wherein the support is malleable

Species IV wherein the support is non-malleable

Depending on which species ~~is~~^{is} of support ^{is} elected, If the non-malleable species is elected, a further election is required between:

Species IVa, wherein the support is a candy bar

Species IVb, wherein the support is a cookie bar

Species IVc, wherein the support is a granola bar

It is noted that two species/inventions of support ingredients are recited (i.e. claims 25&26). Presumably, they are mutually exclusive and are associated with either Species III or IV.

Thus, wherein the support is:

Species x, dextrose, malt dextrine, etc.

Species y, marshmallow

Species z, licorice

In addition, and, again presumably as a function of the type of confection (i.e. non-frozen or frozen), applicant is required to elect one of the following:

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Species a, wherein the supported comestible rocks

Species b, wherein the supported comestible rolls

Species c, wherein the supported comestible spins

Species d, wherein the supported comestible twists

Species e, wherein the supported comestible whistles

Species f, wherein the supported comestible hangs

Species g, wherein the supported comestible pierces

Species h, wherein the supported comestible stands upright

Species i, wherein the supported comestible invertible

Species j, wherein in the supported comestible is wearable

As noted above, although these are referred to as "species" of supported comestible, they could also be considered separate inventions. However, the affect is the same in terms of a restriction requirement.

The claims also recite various species of additional "fun" ingredients and election is required between:

Species aa, wherein the ingredient is flavor

Species bb, wherein the ingredient is a decoration

Species cc, wherein the ingredient is prize

Currently, no claim is generic.

The claims are also restrictable between Invention I, the supported comestible as claimed in claims 1-16.

Invention II, the kit as claimed in claim 17.

Invention III, the mold and packaging apparatus

These inventions are separate and distinct. The supported comestible can be made without the specific kit Group II and it does not have to be made and combined with the elements of Group III. The inventions of Group II and III are two distinct, unrelated inventions. Also, the kit of Group II would not be associated with the product of Group I. It could be used to make the product of Group I.

To expedite prosecution, it is noted that the application was filed without a claim 29. Therefore, claim 30 is renumbered claim 29.

Also, the specification and drawings are replete with inconsistencies in numbering and lettering.

For example, the ingredients are not arranged concentrically in Fig. 33 as is stated on page 33 of the specification and in figure 2 the support is shown as "62" rather than "62a" as is noted on page 33. There are many more errors of this type. Applicant should carefully review all 98 pages of the specification, as well as the nineteen sheets of drawings, for similar problems.

The remainder of the references cited on the USPTO form are cited as art of interest.

Any inquiry concerning this communication or from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

Examiner Weinstein

April 29, 2002

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER
5/2/02